



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Gemma Corporation

File: B-222548.3

Date: February 17, 1987

DIGEST

Protest against award to higher-priced offeror whose technical proposal was deemed "far superior" in technical merit when compared with protester's proposal, is denied where proposal evaluation standards gave greater weight to technical merit and lesser weight to cost and where protester has not shown that the contracting agency's evaluation of the submitted proposals or the award was unreasonable.

DECISION

Gemma Corporation has protested the award of a contract to Science, Engineering & Analysis, Inc. (SEA), by the Department of the Navy under request for proposals (RFP) No. N00123-85-R-0789, issued by the Naval Regional Contracting Center, Long Beach, California. The cost-plus-fixed-fee contract is for technical services for the test and evaluation of training range programs referred to as the Mobile Sea Range (MSR) system for battle group exercises in an "open-ocean" electronic warfare environment. The contractor is to furnish the required services, materials, facilities, and equipment to prepare program technical data software and analysis, revise program documents, develop management information systems and reports, and provide technical management for these exercises.

Gemma alleges that the Navy's selection of SEA was unreasonable. We deny the protest.

BACKGROUND

The RFP listed technical, cost, and management evaluation standards in descending order of importance. Technical considerations were stated to be more important than either cost or management; however, cost was stated to be worth more

038070

than management considerations. Under the technical standards, offerors were asked, for example, to demonstrate understanding of the major contract work areas and to provide a definite technical approach for sample delivery orders. Under technical approach, offerors were also asked to provide resumes of key personnel as well as evidence of a firm commitment of the key employees to the contract. Under management, proposals were to be evaluated with "particular value" given to engineering and project management experience. Under cost, offerors were advised that the importance of cost in the selection process would depend upon the "equality of the other factors among the proposals being evaluated"--that is, "all other things being equal, cost can be the determining factor." Offerors were further informed that cost would also be evaluated on the basis of cost realism.

The Navy states that timely offers were received on August 14, 1985, from four offerors, including Gemma and Systems Engineering Technology Associates Corporation (SETAC). The technical portions of the proposals were scored in August 1985 and further evaluated in October 1985.

As a result of the technical evaluation of the proposals, the Navy determined that one offeror, SCCI, was technically unacceptable, and that while Gemma was considered marginally acceptable, Gemma did not appear to have a realistic chance of obtaining award of the contract without major changes in its technical proposal and significant additional cost data submittals. SEA was found to have submitted the superior technical proposal in all areas evaluated. The only comparable offer was SETAC's, a contractor that was suspended at the time it submitted its proposal and who later sold its interest to SRS Technologies (SRS), resulting in the exclusion of SETAC's offer. We upheld the exclusion of that proposal in SRS Technologies, B-222548.2, Aug. 21, 1986, 86-2 C.P.D. ¶ 208.

Because SEA had the highest ranked offer (cost, technical and management factors considered), the contracting officer determined that SEA was the only competitive offeror. Accordingly, a competitive range of one, composed of SEA was established. Nevertheless, the Navy says that it subsequently included Gemma in the competitive range in an "attempt to foster competition."

The Navy then conducted oral discussions with Gemma and SEA capped with a letter request for best and final offers in May 1986. The Navy's letter to Gemma stated that the Navy had identified major deficiencies in Gemma's cost and technical proposal, and Gemma's proposal was considered to be marginally acceptable. Further, in its letters to Gemma and

SEA, the Navy clarified the RFP's evaluation criteria, stating that their rank, in descending order of importance, was technical, cost, and management approach; that under technical, "Understanding," "Personnel Qualifications," and "Corporate Experience" were to be evaluated; and that under "Cost," "estimated total cost to the Government" and "cost realism" were to be evaluated.

Best and final offers were received on June 6, 1986. Gemma's best and final cost proposal was \$2,295,957; SEA's was \$2,709,148. Although SEA revised certain areas of its proposal, no changes were made in the key personnel that it had originally proposed. Evaluation of the technical proposals resulted in the following scores:

	<u>Gemma</u>	<u>SEA, Inc.</u>
Corporate Experience	23.9	35.5
Personnel Qualifications	24.5	34
Technical Understanding	23	35.5
Management Approach	22.5	36

The Navy's review of Gemma's low costs showed that not all elements proposed were considered to be realistic. Nevertheless, Gemma's proposal was given the maximum score for cost for the purpose of mathematical comparison. However, this concession to Gemma did not affect the proposed selection of SEA's proposal as the one having the greatest overall merit, including cost considerations, especially since the Navy considered SEA's technical proposal, as evidenced by the above scores, to be "far superior" to Gemma's technical proposal.

Concerning the Navy's use of technical and cost factors, contract selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Lockheed Corp., B-199741.2, July 31, 1981, 81-2 C.P.D. ¶ 71. Where the contracting agency's selection official has made a cost/technical tradeoff, the question is whether the tradeoff was reasonable in light of the solicitation's evaluation scheme. Petro-Engineering, Inc., B-218255.2, June 12, 1985, 85-1 C.P.D. ¶ 677. Further, it is well-established that the evaluation of proposals is a matter within the discretion of the contracting agency subject only to a test of reasonableness. Harbert International, Inc., B-222472, July 15, 1986, 86-2 C.P.D. ¶ 67. Based on our review of the record, as discussed below, we cannot question the Navy's evaluation of proposals or the award to SEA.

SOURCE SELECTION

In its initial protest, Gemma argued in rather general terms that the Navy had not justified the award to SEA at a 16 percent higher proposed cost given Gemma's position that there was not a "sufficient technical differential" between the proposals of the two offerors.

In reply, the Navy argued in detail that SEA's proposal was worth the cost premium involved. Specifically, the Navy argued that SEA had a firm understanding of the program requirements, competent personnel with relevant experience, excellent management/corporate experience and that SEA's proposal contained "no deficient risk assessment or deficiencies." By contrast, the Navy found Gemma's proposal to contain: (1) general information which was also lacking in depth and technical knowledge concerning the MSR system to the extent that the proposal was considered deficient; (2) proposed personnel who, while having a high degree of education, had little or no experience with the program or subsystem support except for a few individuals whose experience was primarily in the software area and who were, in any event, insufficient in proposed numbers; (3) deficient corporate experience in that the proposed contract work required experience in MSP programs and Gemma's major experience appeared to be in other than range programs and more in anti-submarine warfare; and (4) proposed subcontractors who had little or no experience to provide support.

Additionally, the Navy found medium to substantial risks associated with: (1) Gemma's ability to perform the requirement; (2) Gemma's limited experience in pertinent areas; and (3) Gemma's capacity to respond to short deadline requirements given its insufficient proposed personnel.

After reviewing the Navy's report, Gemma has taken issue in several respects with the Navy's rationale for awarding the contract to SEA. First, Gemma argues that the Navy's criticism of its proposal for lacking understanding of the MSR system gave improper weight to RFP task J, MSR operational support, which was allegedly only 1 of 19 work tasks.

Contrary to Gemma's position that this deficiency related to only RFP task J, which involved 5 percent of the contract tasks, the deficiency also relates to tasks K, O, P, R, Q, S, and T, which also expressly cite MSR requirements and involve 60 percent of the work requirements.

In any event, the Navy is of the view that even if Gemma had received full credit on technical understanding, this fact would not have affected the award selection especially given the perceived superior merit of SEA's proposal and since

there were two other technical evaluation standards (Personnel Qualifications and Corporate Experience), the scoring of which would have diluted any increased technical understanding score of Gemma's. Consequently, and based on our review of the record, we cannot agree that the Navy's evaluation of the technical understanding evaluation standard was unreasonable as concerns the two proposals.

Next, Gemma argues that the Navy improperly evaluated Gemma's corporate and personnel experience and, in any event, allegedly failed to give adequate notice of this deficiency during discussions. Further, Gemma insists that the information which it provided to the Navy clearly shows that its proposed personnel have experience in all required areas and, moreover, are more than adequate in number to meet the contract's requirements. Finally, Gemma insists that its prior corporate experience shows considerable MSR experience.

As to Gemma's concern about the adequacy of the Navy's discussion of this perceived weakness in personnel, we cannot question the Navy's position that its discussions with Gemma were sufficient on this point to raise a broad range of concerns about Gemma's personnel. Specifically, the Navy informed Gemma in detail of its perceived weakness, discussed above, in this area by informing Gemma that it had a limited number of proposed engineers with knowledge/experience in -- range systems and range instrumentation.

As to the Navy's actual evaluation of Gemma's proposed personnel, we view Gemma's criticisms as evidencing a mere disagreement with the Navy's evaluation without a further showing of the unreasonableness of that evaluation. It is well-established that the protester's mere disagreement with the contracting agency's evaluation does not render the evaluation unreasonable. See General Management Systems, Inc., B-214246, Sept. 25, 1984, 84-2 C.P.D. ¶ 351. Related to this issue is Gemma's allegation that the Navy improperly evaluated SEA's proposed personnel who, the protester maintains, were not committed to the contract by the RFP as required. Nevertheless, the Navy insists that under the "Key Personnel" clause of the RFP (and the resulting SEA contract) only the Navy may permit SEA to substitute key personnel who are otherwise committed to the contract. We see no basis to question the Navy's analysis.

Concerning corporate experience, although Gemma argues that it has provided task work to the Navy on the MSR program, the Navy insists, as noted above, that Gemma's major experience appeared to have been more in anti-submarine warfare rather than in the MSR program. By contrast, the evaluation shows that the Navy considered SEA to have showed a great deal of

demonstrated experience with MSR in contrast to Gemma's position that SEA does not have this experience. Again, we view Gemma's position--and its position that the Navy also improperly evaluated the experience of Gemma's proposed subcontractors--as evidencing mere disagreement with the Navy's evaluation but not evidence, in itself, that the Navy's proposal evaluation was unreasonable.

OTHER ISSUES

Two other issues are raised by Gemma. First, Gemma complains that the Navy improperly denied Gemma a 5-day preaward notice of the impending small business set-aside award to SEA allegedly in an attempt to deny Gemma the opportunity to submit a preaward protest. In reply, the Navy insists that there was a genuine urgency to award the contract in November 1986 given the expiration of the prior contract for similar work. Although Gemma contests this urgency rationale, the alleged improper failure to give the notice does not provide a basis to disturb an otherwise valid award. See Columbia Research Corp., B-193154, May 15, 1979, 79-1 C.P.D. ¶ 353.

Second, Gemma argues that the Navy improperly changed the work statement of the RFP before awarding the contract. The Navy, however, insists that it has not changed the work statement, and we have no basis to question the Navy's position.

We deny the protest.

for Seymour Efron
Harry R. Van Cleve
General Counsel